

to create another Federal Department that ranks at the top of the General Accounting Office's "high-risk" list of agencies in the Government that are most vulnerable to waste, fraud, and mismanagement. Managerial tools and flexibility are not needed to create a civil service, that, according to one expert, Paul Light, of the Brookings Institution, and former staff member to the Governmental Affairs Committee:

Underwhelms at virtually every task it undertakes. It is sluggish at hiring, hyper-inflated at appraising, permissive at promoting, weak-kneed at disciplining, and mind-numbingly elongated at firing.

Our goal in this new department must not be to replicate the failures Mr. Light outlines, but, rather, to make improvements. If we cannot improve our well-known operational shortcomings now that our Nation's security is at issue, when in the world will we ever be able to do so?

According to the legislation before us today, the mission of the new department is to "promote homeland security," "prevent terrorist attacks," and "reduce the vulnerability of the United States to terrorism." I question how this new department will possibly be able to fulfill its mission if it is bogged down by the same old persistent management problems that have faced the rest of our Government for so many years.

First and foremost, I think most of us would agree with Paul Light, and other experts, that the Federal civil service system, the process the Federal Government uses to hire and promote workers, is broken.

Madam President, this is a logical stopping point for me. If I am reading the clock correctly, we are very close to the time of recess for our briefing. So, with that, I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until the hour of 3:30 p.m.

Thereupon, the Senate, at 2:28 p.m., recessed until 3:30 p.m. and reassembled when called to order by the Presiding Officer (Mr. REID).

HOMELAND SECURITY ACT OF 2002—Continued

AMENDMENT NO. 4486 TO AMENDMENT NO. 4471

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Minnesota [Mr. WELLSTONE] proposes an amendment numbered 4486.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To prohibit the Secretary of Homeland Security from contracting with any corporate expatriate)

After section 171, insert the following:

SEC. ____ PROHIBITION ON CONTRACTS WITH CORPORATE EXPATRIATES.

(a) IN GENERAL.—The Secretary may not enter into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation under subsection (b).

(b) INVERTED DOMESTIC CORPORATION.—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) the entity has completed the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

(2) after the acquisition at least 50 percent of the stock (by vote or value) of the entity is held—

(A) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

(B) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

(3) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) RULES FOR APPLICATION OF SUBSECTION (b).—In applying subsection (b) for purposes of subsection (a), the following rules shall apply:

(A) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership for purposes of subsection (b)(2)—

(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity, or

(ii) stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1).

(B) PLAN DEEMED IN CERTAIN CASES.—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (b)(2) are met, such actions shall be treated as pursuant to a plan.

(C) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(D) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (b) to the acquisition of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as 1 partnership.

(E) TREATMENT OF CERTAIN RIGHTS.—The Secretary shall prescribe such regulations as may be necessary—

(i) to treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock, and

(ii) to treat stock as not stock.

(2) EXPANDED AFFILIATED GROUP.—The term "expanded affiliated group" means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504(a) of such Code shall be applied by substituting "more than 50 percent" for "at least 80 percent" each place it appears.

(3) FOREIGN INCORPORATED ENTITY.—The term "foreign incorporated entity" means any entity which is, or but for subsection (b) would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

(4) OTHER DEFINITIONS.—The terms "person", "domestic", and "foreign" have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701(a) of the Internal Revenue Code of 1986, respectively.

(d) WAIVER.—The President may waive subsection (a) with respect to any specific contract if the President certifies to Congress that the waiver is required in the interest of national security.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that I have 5 minutes, without losing my place in the debate, as in morning business.

The PRESIDING OFFICER (Mr. CARPER). Without objection, it is so ordered. The Senator is recognized for 5 minutes. Following his statement, he will have the floor.

(The remarks of Mr. WELLSTONE are printed in today's RECORD under "Morning Business.")

Mr. WELLSTONE. Mr. President, I rise to speak to a very simple amendment I introduced. I say to my colleagues, this actually was passed in the House in the homeland defense bill. It certainly is relevant that we bar the Secretary of Homeland Security from entering into contracts with U.S. companies that give up U.S. citizenship to avoid U.S. taxes.

I need to really summarize this amendment again. This is a very simple amendment that would bar the Secretary of Homeland Security from entering into contracts with U.S. companies that give up U.S. citizenship to avoid U.S. taxes.

To about 99.9 percent of people in Minnesota and probably to about 99.9 percent of the people in the country, this is a very reasonable proposition. My colleagues might remember that I had an amendment like this to the Defense appropriations bill which passed here by unanimous vote.

Before I get into the specifics of my amendment, let me make a quick comment about the relevancy of the amendment. I gather there is an agreement among the majority leader and the minority leader to move all nonrelevant amendments. That agreement won't affect this amendment because it was drafted to be relevant. It deals with government contracts. It deals with the Department of Homeland Security.

The underlying House bill, as I just mentioned, has a similar provision. So the substance of my amendment is